

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DANIEL DAUWALDER,
Plaintiff,

v.

J. ATHERTON, et al.,
Defendants.

Case No.: 1:24-cv-0523 JLT SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
CERTAIN CLAIMS

(Doc. 10)

Daniel Dauwalder seeks to hold the defendants liable for violations of his civil rights pursuant to 42 U.S.C. § 1983. The assigned magistrate judge screened Plaintiff's complaint and found he stated cognizable claims for: (1) excessive force against defendants Atherton and Perez, and (2) deliberate indifference to serious medical needs against defendants Davydov and Garmendia. (Doc. 7 at 3-12.) However, the magistrate judge found the other claims raised by Plaintiff were not cognizable. (*Id.*) In response to the Screening Order, Plaintiff elected to proceed on the cognizable claims against Atherton, Perez, Davydov, and Garmendia, and to have the other claims be dismissed. (Doc. 9 at 1.)

The magistrate judge issued Findings and Recommendations, referencing the prior findings of the Court and recommending the action proceed only on Plaintiff's cognizable claims. (Doc. 10 at 1-2.) The magistrate judge also recommended any other claims be dismissed. (*Id.*) The Court served the Findings and Recommendations on Plaintiff and notified him that any

1 objections were due within 14 days. (*Id.* at 2.) The Court advised him that the “failure to file any
2 objections within the specified time may result in the waiver of certain rights on appeal.” (*Id.* at
3 2-3, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did not file
4 objections, and the time to do so has passed.

5 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
6 Having carefully reviewed the matter, the Court concludes the Findings and Recommendations,--
7 as well as the incorporated findings in the Screening Order—are supported by the record and
8 proper analysis. Thus, the Court **ORDERS**:

- 9 1. The Findings and Recommendations issued October 24, 2024 (Doc. 10) are
10 **ADOPTED** in full.
- 11 2. This action **PROCEEDS** only on the following claims: (1) excessive force against
12 Defendants Atherton and Perez and (2) deliberate indifference to serious medical
13 needs against Defendants Davydov and Garmendia.
- 14 3. Any other claims raised in Plaintiff’s complaint are **DISMISSED**.
- 15 4. This matter is referred to the magistrate judge for further proceedings.

16
17 IT IS SO ORDERED.

18 Dated: **November 14, 2024**


UNITED STATES DISTRICT JUDGE